UNITED STATES DEPARTMENT OF COMMERCE
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07/580,778	09/11/90	BARCLAY	W	2391-1

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EXAMINER	
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ART UNIT	**PAPER NUMBER**
1808	

DATE MAILED: 01/07/92

Below is a communication from the EXAMINER in charge of this application
COMMISSIONER OF PATENTS AND TRADEMARKS

#19

ADVISORY ACTION

☒ THE PERIOD FOR RESPONSE:

☒ is extended to run 2 months from the date of the Final Rejection

☐ continues to run _____ from the date of the Final Rejection

☐ expires three months from the date of the final rejection or as of the mailing date of this Advisory Action, whichever is later. In no event however, will the statutory period for response expire later than six months from the date of the final rejection.

Any extension of time must be obtained by filing a petition under 37 CFR 1.136(a), the proposed response and the appropriate fee. The date on which the response, the petition, and the fee have been filed is the date of the response and also the date for the purposes of determining the period of extension and the corresponding amount of the fee. Any extension fee pursuant to 37 CFR 1.17 will be calculated from the date that the shortened statutory period for response expires as set forth above.

☐ Appellant's Brief is due in accordance with 37 CFR 1.192(a).

☒ Applicant's response to the final rejection, filed 12/4/91 and 11/18/91 has been considered with the following affect, but it is not deemed to place the application in condition for allowance:

1. ☒ The proposed amendments to the claim and/or specification will not be entered and the final rejection stands because:
   a. ☐ There is no convincing showing under 37 CFR 1.116(b) why the proposed amendment is necessary and was not earlier presented.
   b. ☒ They raise new issues that would require further consideration and/or search. (See Note).
   c. ☐ They raise the issue of new matter. (See Note).
   d. ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal.
   e. ☒ They present additional claims without cancelling a corresponding number of finally rejected claims.

   NOTE: See attachment

2. ☐ Newly proposed or amended claims _____ would be allowed if submitted in a separately filed amendment cancelling the non-allowable claims.

3. ☐ Upon the filing of an appeal, the proposed amendment ☐ will be ☐ will not be, entered and the status of the claims in this application would be as follows:

   Allowed claims: _____
   Claims objected to: _____
   Claims rejected: _____

   However;

   a. ☐ The rejection of claims _____ on references is deemed to be overcome by applicant's response.
   b. ☐ The rejection of claims _____ on non-reference grounds only is deemed to be overcome by applicant's response.

4. ☒ The ~~affidavit, exhibit or~~ request for reconsideration has been considered but does not overcome the rejection. See attachment

5. ☐ The affidavit or exhibit will not be considered because applicant has not shown good and sufficient reasons why it was not earlier presented.

☐ The proposed drawing correction ☐ has ☐ has not been approved by the examiner.

☐ Other

While the arguments and comments have been considered, the amendments have not been entered for purposes of appeal.

Applicant's newly submitted arguments and amendments have been carefully considered but not found persuasive of allowability.

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While proposed claim 1, if submitted alone might be considered allowable and within the guidelines discussed at the oral interview, the newly submitted claims 58, 66, 67, and 68-72 raise new issues not previously addressed and would require more than a cursory review.

For example, it must be noted that the limitations of claim 1 with regard to the salinity and temperature are critical to the distinguishing of that claim over the prior art. Yet claims 58, 66 and 67 have no such limitations.

Further claims 68-72 present new claims after final action without the cancellation of a corresponding number of pending claims.

Also it is unclear that the food product claimed where the microorganism is not present, but where only the omega-3 highly unsaturated fatty acid is present, would differ patentably from those food products containing said acid derived other another source or even from a related microorganism.

For these reasons, the claims remain rejected for reasons set forth in the Office action of July 30, 1991 and as further discussed in the advisory action of September 30, 1991.

D.W. Robinson
A/C 703
308-2897

DOUGLAS W. ROBINSON
SUPERVISORY PATENT EXAMINER
ART UNIT 188